

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 24

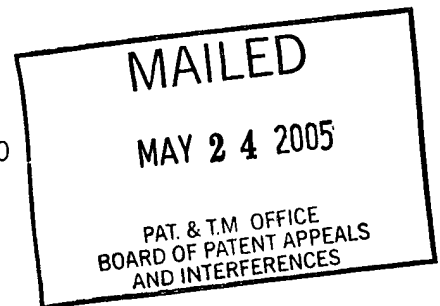
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHRINIWAS OHIA

Appeal No. 2005-0521
Application No. 09/436,920

ON BRIEF



Before JERRY SMITH, LEVY and BLANKENSHIP, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-21, which constitute all the claims in the application.

The disclosed invention pertains to a method and apparatus for communicating information between a management card and first and second interface cards coupled to the management

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card. A client identifies an interface card or a network device associated with the interface card, and a communication link between the client and a particular one of the first and second interface cards is established in response to the interface card identified by the client.

Representative claim 1 is reproduced as follows:

1. A system for communicating management information, comprising:

a first interface card;

a second interface card; and

a management card coupled to the first interface card and the second interface card, the management card operable to:

receive a command from a client, the command identifying an interface card or a network device associated with an interface card;

establish a communication link between the client and a particular one of the first interface card and the second interface card selected in response to the command communicated by the client; and

communicate management information using the communication link.

The examiner relies on the following references:

Flood et al. (Flood)	4,937,777	Jun. 26, 1990
Schneider et al. (Schneider)	6,304,895	Oct. 16, 2001
		(filed Jul. 23, 1999)

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Claims 1, 4-7, 10-14, 16 and 18-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Flood. Claims 2, 3, 8, 9, 15 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Flood in view of Schneider.

Rather than repeat the arguments of appellant or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon supports the examiner's rejection of claims 1, 2, 4-8, 10-16 and 18-21, but the evidence does not support the rejection of claims 3, 9 and 17. Accordingly, we affirm-in-part.

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We consider first the rejection of claims 1, 4-7, 10-14, 16 and 18-21 under 35 U.S.C. § 102(e) as being anticipated by Flood. Appellant has indicated that claims 1, 4, 5, 7, 10-12, 14, 16, 18, 19 and 21 stand or fall together as a first group, and claims 6, 13 and 20 stand or fall together as a second group (brief, page 5). Consistent with this indication appellant has made no separate arguments with respect to any of the claims on appeal within each group. Accordingly, all the claims within each group of claims will stand or fall together. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Therefore, we will consider the anticipation rejection against claims 1 and 6 as representative of all the claims rejected on anticipation.

With respect to independent claim 1, the examiner has indicated how he finds the claimed invention to be fully met by the disclosure of Flood (answer, page 4). Appellant argues that given the elements identified by the examiner, Flood fails to disclose a management card operable to receive a command from a client as claimed. Appellant also argues that nowhere does Flood state that its command identifies an interface card or a network device associated with an interface card as claimed. Appellant

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additionally argues that Flood fails to disclose that the management card is operable to establish a communication link between the client and a particular one of the interface cards in response to the command from the client. Appellant asserts that connections provided by cables 25 and 26 in Flood are not in response to a command communicated by the client (brief, pages 7-10).

The examiner responds that Flood teaches that a central host computer can program and control the operation of a plurality of programmable controllers. The examiner notes that the claimed commands from a client are met by the programming instructions from a user in Flood. The examiner also notes that system controller 16 in Flood is connected to the programming terminal to receive user programs (answer, pages 9-11).

Appellant responds that the programming instructions of Flood have nothing to do with identifying an interface card or a network device associated with an interface card as claimed. Appellant argues that, instead, the programming instructions of Flood are used for programming and controlling a plurality of programmable controllers. Appellant argues that the examiner is relying on two different portions of Flood to teach the claimed

command. Appellant repeats his position that system controller 16 of Flood cannot be the management card and meet the recitations of claim 1 (reply brief, pages 2-5).

We will sustain the examiner's rejection of representative claim 1 and of the other claims grouped therewith. Although the examiner has not properly identified what elements of Flood correspond to the claimed first interface card, second interface card and management card, it appears from the record that the first and second interface cards can be any of the processors 18 or scanners 20, and the management card corresponds to the system controller 16. It is clear that system controller 16 of Flood is coupled to each of the processors 18 and scanners 20. Claim 1 recites that the management card (system controller 16) receives a command from a client identifying an interface card or network device associated with an interface card. Flood meets this recitation because system controller 16 receives commands from a client (24) which identify the programable controller to which they are intended. The management card (system controller 16) in Flood establishes a communication link to the designated controller so that the programs and commands from terminal 24 can be downloaded to the appropriate controller. Finally, Flood meets the final step of claim 1 because the system

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controller 16 uses the established link to communicate management information between the terminal 24 and the designated programmable controller. Note that each of the execution processors of Flood is individually loaded with user control programs (column 5, lines 1-5).

Although we have given careful consideration to appellant's arguments in the briefs, it appears to us that appellant has not fully grasped the manner in which the examiner has read claim 1 on the disclosure of Flood. Although appellant argues that system controller 16 receives no command, it is clear to us that system controller 16 receives a command from terminal 24 indicating which programmable controller is to be accessed by the system controller. Although cable 25 is not connected in response to a command, the appropriate connection along the control, data and address lines 21-23 between the system controller 16 and the designated programmable controller is made in response to the commands received on cable 25 from the client. We find that this operation meets the recitations of claim 1. In other words, individual communication links are established between system controller 16 and execution processors 18 on lines 21-23 in response to requests made by the client at terminal 24.

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With respect to representative claim 6, the examiner has indicated how he reads the claimed invention on the disclosure of Flood (answer, page 5). We note that appellant grouped claims 6, 13 and 20, which are rejected under 35 U.S.C. § 102, with claims 3, 9 and 17, which were rejected under 35 U.S.C. § 103. Appellant has only addressed the limitations of claim 3 and has not made arguments with respect to the limitations of claim 6 even though claim 6 is broader than claim 3. Since claims 6, 13 and 20 each recites a limitation which has not been argued by appellant, these claims stand or fall with the claim from which they each respectively depend. Since we have sustained the rejection with respect to each of the parent claims, we also sustain the rejection of claims 6, 13 and 20.

We now consider the rejection of claims 2, 3, 8, 9, 15 and 17 under 35 U.S.C. § 103 based on the teachings of Flood and Schneider. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one

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having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039-40, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531

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F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived (see 37 CFR § 41.37(c)(1)(vii)(2004)).

Appellant has indicated that claims 2, 8 and 15 stand or fall together as a single group (brief, page 5). The examiner has indicated how he finds the invention of these claims to be unpatentable (answer, pages 6-8). Appellant argues that the examiner has failed to identify which components in Schneider correspond to the management card, the switch, the processor and the memory of claim 2. Appellant also argues that switches 74a and 74b do not form part of a management card, and the combination fails to teach the various elements as claimed (brief, pages 10-11).

The examiner responds that Schneider teaches how a plurality of users may control different cards and how different switch ports are selected (answer, pages 11-12). Appellant responds that switches 74a and 74b of Schneider do not form part of a management card and there is no teaching of a mapping to a first port and a second port (reply brief, page 5).

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We will sustain the examiner's rejection of claims 2, 8 and 15. The examiner has cited Schneider to teach the claimed manner in which communication links are established between a client and a port. The examiner has explained in some detail how the configuration wizard in Schneider would have led the artisan to map specific communications in Flood to the appropriate port in the management card. Appellant has not addressed the specific explanation offered by the examiner but has simply asserted that elements 74a and 74b of Schneider do not meet the claimed invention. We can find nothing in the examiner's explanation which suggests that the examiner has relied on these elements to support his position.

Since the examiner appears to have established a prima facie case of the obviousness of claims 2, 8 and 15, and since appellant's arguments do not convince us that the rejection is in error, we sustain the rejection of these claims as noted above.

Although appellant nominally grouped claims 3, 9 and 17 with claims 6, 13 and 20, these claims are substantially different and were rejected on a different basis as discussed above. We will consider these claims separately because appellant argued them and because the examiner responded to the arguments with respect to these claims. The examiner's rejection

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of these claims is set forth on page 9 of the answer. Appellant argues that the cited portions of Flood have nothing to do with the claimed processor which is operable to configure the management information for the operating system of the network device associated with the particular interface card. Appellant notes that Flood does not even remotely consider different operating systems (brief, pages 11-12). The examiner responds that the artisan would have understood that the first and second network devices of Flood use first and second operating systems (answer, page 13). Appellant responds that there is no basis to conclude that Flood teaches the limitations of claim 3. Appellant notes that the Flood-Schneider combination does not even discuss operating systems or different operating systems associated with different network devices (reply brief, page 5).

We will not sustain the examiner's rejection of claims 3, 9 and 17 for essentially the reasons argued by appellant in the briefs. Specifically, the applied prior art makes no mention of first and second operating systems and of configuring management information for the operating system. The examiner's "finding" of different operating systems in Flood is nothing more than speculation and has no support in the reference. While we suspect that different devices can operate under different

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operating systems, and that communicated information must be configured based on the operating system, we are not permitted to substitute our opinions or beliefs for evidence lacking in the record. The examiner is required to provide a clear evidentiary record to support the rejection of each claim. The prior art applied in the examiner's rejection simply does not provide the support needed to reject claims 3, 9 and 17.

In summary, the examiner's anticipation rejection has been sustained with respect to all claims, and the obviousness rejection has been sustained with respect to claims 2, 8 and 15, but has not been sustained with respect to claims 3, 9 and 17. Therefore, the decision of the examiner rejecting claims 1-21 is affirmed-in-part.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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JERRY SMITH

JERRY SMITH
Administrative Patent Judge

Stuart S. Levy
STUART S. LEVY

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Howard B. Blandford

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APPEALS AND

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